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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/514,033
Filing Date: February 25, 2000
Appellant(s): BRODIGAN ET AL.

JEREMY J. CURCURI
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/05/07 appealing from the Office action mailed 11/03/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,742,667	PINDER ET AL	4-1998
6,219,042	ANDERSON ET AL	4-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11, rejected under 35 U.S.C. 103(a) as being unpatentable over **Pinder et al (5,742,677)** in view of **Anderson et al (6,219,042)**.

As to claim 1, note the **Pinder** reference figure 1, disclose a method for providing personalized interactive programming over a data path, the data path extending between a service provider and a set top box (Terminal Unit or Home Communications Terminal 'TU' 16), the service provider being connected to a data network and having an address, the method comprising:

Establishing a communication path (figs.1 and 2A-D, col.4, lines 25-66, col.5, lines 5-44, line 59-col.6, line 26) between a broadband digital terminal (Information Distribution Center 'IDC' 12 or Head-end 125 "a local distributor, col.5, line 59-col.6, line 26) and the set top box, the broadband digital terminal (IDC-12) being connected to a data network (Internet, WAN, public or private, switched or non-switched interactive data network, such as ATM, col.9, line 66-col.10, line 35) and the service provider (SP-14-1 to 14-n) broadcasting video through the broadband digital terminal to the set top box (col.4, lines 25-42), note that to initial transaction the SP broadcasts Messages (private key, address, logo and graphics data and the like), col.4, line 43-col.5, line 29) which enables the SP to communicate directly to TU-16 via addressed communications;

Sending a private data packet (Messages) in addition to the broadcast video from the SP, over the network (WAN or Internet) and through the broadband digital terminal to the set top box (TU-16), the packet containing application interface information

(address, logo and graphics data and the like) for the service provider and containing the service provider address (col.4, line 43-col.5, line 29) and

Establishing an impulse pay-per-view communication path (col.5, lines 5-36, line 46-col.6, line 32, col.9, lines 5-46 and line 66-col.10, line 35) from the set top box through the broadband digital terminal and over the network to the service provider based upon the address to allow interactive programming using the application interface information between the service provider and the set top box to personalize the broadcast programming (col.4, line 43-col.5, line 36 and col.9, line 66-col.10, line 35), note that a virtual channel or path is established between the SP and TU or HCT-16 using the ATM network.

Pinder teaches where the service provider transmits messages containing their address, logo and graphics data and the like (private data packet and Application Interface information) and establishes an IPPV path using the received data, but fails to explicitly teach where the messages includes broadcast video, etc.

However, note the **Anderson** reference figures 1-3, discloses a WebTV Internet terminal and transmits web page(s) (Application Interface Information) with additional enhanced features, e.g. TV video, mail, favorites, etc., (col.2, line 48-col.3, line 12 and col.4, line 45-col.5, line 23)

Therefore it would have been obvious to one of ordinary skilled artisan to incorporate the teaching of Anderson into the system of Pinder to include, broadcast video, etc., with the private data packet as additional enhancement to the display terminal that entices the user to order IPPV video.

As to claim 2, Pinder further discloses where sending private data packet, is performed by inserting the private data packet between frames of a video transmission (col.7, lines 11-55).

As to claim 3, Pinder further discloses where the video transmission is prerecorded programming that is transmitted on demand (col.5, lines 37-col.6, line 26 and col.9, lines 3-46).

As to claim 4, Pinder further discloses where the video transmission is real-time programming (col.9, lines 3-46).

As to claims 5-6, the claimed "An interactive video/data system for interacting with destination address of a network..." is composed of the same structural elements that were discussed with respect to the rejection of claim 1.

As to claims 7-8, Pinder further discloses where the interactive video/data system comprises an optical network interface between IDC-12 and TU or HCT-16 (col.9, line 66-col.10, line 35) and further discloses a network interface device, such as a modem, between IDC-12 and TU or HCT-16 (col.9, lines 5-46).

Claim 9 is met as previously discussed with respect to claim 2.

As to claims 10-11 is met as previously discussed with respect to claim 1.

(10) Response to Argument

Examiner respectfully disagrees that the rejection should be reversed.

Appellant discusses the prior art of record and the claimed invention making references to "...private data packet is sent, for example, between MPEG2 frames of broadcast video..." that "...Examiner states that Pinder fails to teach where the messages include broadcast video, etc., and relies on Anderson..." that "Appellants believe the shortcomings of Pinder are greater than acknowledged by the Examiner" that "...Pinder does not suggest the claimed private data packet containing application interface information for the service provider and containing the service provider address sent with the broadcast video, as claimed..." that "...Anderson does not overcome the shortcomings of Pinder" (see page 4+ of Appellant Brief).

In response, Examiner disagrees with assertion for several reasons. Examiner notes Appellant's arguments, however, Examiner would like to point out to the Panel that, the various claims, i.e., independent claims 1, 5 and others, language recites "...private data packet..." and does not recite "...private data packet...between MPEG2 frame..." as stated in Appellant's Brief. Appellant's traversal of the combination of references stem primarily from Appellant's mischaracterization of the Pinder reference. Pinder discloses in figures 1-2D, and column 4, lines 43-66, an information distribution center 12, a trusted entity for registering information specific to a service provider (SP), where each service provider entrust the trusted entity (central server or main host) with a key certificate and a public key. Pinder further discloses that the key certificate certifies to the validity of the key and the trusted entity preserves the information in confidence from other service providers and service pirates. In an initial transaction or

communication between the trusted entity and the subscription information terminal of a particular subscriber, the trusted entity validates the identity of the service provider to the terminal, their key and communicates a transport data stream identifier over which to expect communications. These are private data messages. Messages from the trusted entity to the home communications terminals (HCTs) preferably are signed by the trusted entity and their signature certified by the process described by U.S. application...or other known process. All this information or selected portions may be communicated encrypted and is decrypted by the secure microprocessor...Other information about the service provider may be transmitted in the clear (their address, logo and graphics data and the like)...Pinder further discloses in column 7, line 40+ that "ISP 142 may also be arranged to supply the data for transmission during the unused portions of a digital data stream such as an MPEG compressed video data stream." and further disclose that "At a receiver...the packet is received, certified as to signature, decrypted as necessary and acted upon as appropriate according to embedded control data or predetermined algorithms stored..." Clearly from the above cited portions of disclosure, Pinder discloses establishing a communication path (figs.1 and 2A-D, col.4, lines 25-66, col.5, lines 5-44, line 59-col.6, line 26) between a broadband digital terminal (Information Distribution Center 'IDC' 12 or Head-end 125 "a local distributor, col.5, line 59-col.6, line 26) and the set top box (Home Communications Terminal 'HCT' 2), the broadband digital terminal (IDC-12) being connected to a data network (Internet, WAN, public or private, switched or non-switched interactive data network, such as ATM, col.9, line 66-col.10, line 35) and the service provider (SP-14-1 to 14-n) broadcasting

video through the broadband digital terminal to the set top box (col.4, lines 25-42).

Pinder discloses an initial transaction process where SP broadcasts Messages "a private data packet" i.e., encrypted data which includes a service provider address, logo and graphic data and the like (application interface information for the service provider) over a network (figs.1-2D) through the broadband digital terminal (information Distribution Center 12 or Head-end 125, col.5, line 59-col.6, line 26) to the set top box (Home Communications Terminal 'HCT' 2); establishing an impulse pay-per-view communication path (col.5, lines 5-36, line 46-col.6, line 32, col.9, lines 5-46 and line 66-col.10, line 35) from the set top box through the broadband digital terminal and over the network to the service provider based upon the address to allow interactive programming using the application interface information between the service provider and the set top box to personalize the broadcast programming (col.4, line 43-col.5, line 36 and col.9, line 66-col.10, line 35), where a virtual channel or path is established between the SP and TU or HCT-16 using the ATM network. Pinder is silent as to where the message includes broadcast video, etc. However, in the same field of endeavor, **Anderson** discloses in figures 1-3, a WebTV Internet terminal and transmits web page(s) (Application Interface Information) with additional enhanced features, e.g. TV video, mail, favorites, etc., (col.2, line 48-col.3, line 12 and col.4, line 45-col.5, line 23), which meets Appellant's Arguments on page 5+ of the Brief). Accordingly the combination of Pinder in view of Anderson is deemed proper and should be sustained.

Appellant further states that "...the Examiner states that it would have been obvious to combine the references..." and summarizes by making references to the disclosure of in the individual references (see pages 6+ of Appellant Brief).

In response, Examiner notes Appellants remarks, however Examiner maintains the combination is proper. Examiner respectfully disagrees with Appellant's conclusion since Pinder private data packet includes address of the service provider, logo graphics and the like and further discloses that the ISP may also be arranged to supply data for transmission during unused portions of a digital stream such as an MPEG compressed video data stream (col.7, lines 36-43). In any event, the Appellant is reminded that a reference can be relied upon for all that would have reasonably suggested to one of ordinary skill in the art, including non-preferred/preferred embodiments. Pinder meets all the claim limitations as discussed above and the only teaching absent from Pinder is private data packet including broadcast video, for which Anderson has been relied upon. Furthermore Appellant's own discloses (page 3, line 12+) states that "The system preferably inserts the private data packets between frames of a video transmission on the broadband network" and page 4, line 4+ states that "The PDP is preferably inserted between frames of the MPEG video broadcast. Of course, other video formats may be used in the alternative." Hence the combination of Pinder in view of Anderson is deemed proper and should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Annan Q Shang/

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